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09/938,455	08/24/2001	Jessica Weiss Goldberg	J6709(C)	2226

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PATENT DEPARTMENT
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EXAMINER

BOYER, CHARLES I

ART UNIT

PAPER NUMBER

1751

DATE MAILED: 06/03/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/938,455	Applicant(s) Goldberg et al
	Examiner Charles Boyer	Art Unit 1751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Aug 24, 2001

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-36 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-36 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3

6) Other: _____

Art Unit: 1751

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 26 recites the limitation "emulsifier" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Art Unit: 1751

5. Claims 1-19, and 28-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Dixon, US 6,407,044.

Dixon teaches aerosol personal cleansing compositions (see abstract). An example of such a composition is a shower gel base comprising 4.73% sodium lauryl ether sulfate, 3% glycerin, 5.25% lauroamphoacetate, 2.43% palm kernel fatty acid, 0.4% cationic polymer, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example I). Another example comprises 5.13% sodium lauryl ether sulfate, 0.5% trihydroxystearin, 1.43% lauroamphoacetate, 0.3% cationic polymer, 5% petrolatum, 7.5% soybean oil, and the balance water wherein the base is dispensed in a pressurized mixer containing 85-97% base and 3-15% propellant (col. 15, example F). As this reference meets all material limitations of the claims at hand, the reference is anticipatory. With respect to the present compositions being present in a lamellar phase, as fatty acids and hydroxystearin are well known in the art as lamellar structurants, the examiner maintains these examples will inherently exhibit this property.

6. Claims 1, 2, 4, 5, 8-12, and 28-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Osipow et al, US 5,308,643.

Osipow et al teach self-lathering shaving compositions (see abstract). An example of such a composition comprises 11% soap, 4.25% mineral oil, at least 2% coconut fatty acid, 2.12% corn oil, 4.5% isopentane, and the balance water (col. 9, example 2). As this reference meets all

Art Unit: 1751

material limitations of the claims at hand, the reference is anticipatory. With respect to the present compositions being present in a lamellar phase, as fatty acids are well known in the art as lamellar structurants, the examiner maintains this example will inherently exhibit this property.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schmidt et al, US 5,002,680.

Schmidt et al teach a skin cleansing aerosol mousse (see abstract). An example of such a composition comprises 6% alkyl glyceryl ether sulfonate, 40% mineral oil, 1% stearic acid, 0.25% cationic polymer, and the balance water wherein the base is dispensed in a pressurized mixer containing 94% base and 6% propellant (col. 11, example). Moisturizers such as isopropyl esters of oleic and isostearic acids, and vegetable oils may be included in these compositions (col. 4, lines 11-40). Amphoteric surfactants such as betaines are suitable cosurfactants of the invention (col. 5, lines 7-20). It would have been obvious to one of ordinary skill in the art to add a well known moisturizer such as isopropyl esters of oleic and isostearic acids, well known in the art as

Art Unit: 1751

lamellar structurants, to the example above and meet the material limitations of the claims at hand as such moisturizers are taught as suitable in the compositions of Schmidt et al.

9. Claims 1-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lyle et al, WO 00/39273.

Lyle et al teach self-foaming cleansing compositions (see abstract). An example of such a composition is a base comprising 10% sodium lauryl ether sulfate, 4% cocamidopropyl betaine, 0.15% guar hydroxypropyltrimonium chloride, 0.5% isopropyl palmitate, and the balance water wherein the base has a viscosity of 43,000 pa s, is dispensed in a pressurized aluminum can containing 92% base and 8% propellant (page 17, example 1). Hydrophobic benefit agents of the invention include oils, essential oils, triglycerides, higher fatty acids such as lauric, oleic, linoleic, and isostearic acids, and esters such as cholesterol isostearate (pages 8 and 9). Amphoteric surfactants such as betaines are suitable cosurfactants of the invention (page 12). It would have been obvious to one of ordinary skill in the art to add a well known moisturizer such as fatty acids, well known in the art as lamellar structurants, to the example above and meet the material limitations of the claims at hand as such moisturizers are taught as suitable in the compositions of Lyle et al.

Art Unit: 1751

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Boyer whose telephone number is (703) 308-2524. The examiner can normally be reached on Monday-Friday from 9:30 AM - 6:00 PM.

If reasonable attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for this Group is (703) 872-9310 for non-after-final amendments and (703) 872-9311 for after-final amendments.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Charles Boyer



May 30, 2003